

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-311-C - ORDER NO. 2010-626
SEPTEMBER 16, 2010

IN RE: Genesis Telecommunications, LLC,)	ORDER DENYING AND
Complainant/Petitioner v. United Telephone)	DISMISSING PETITION
of the Carolinas d/b/a CenturyLink (f/k/a)	
Embarq), Defendant/Respondent)	

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Petition for Rehearing or Reconsideration of Order No. 2010-542 filed by Genesis Telecommunications, LLC (“Genesis”) in this complaint matter against United Telephone of the Carolinas d/b/a CenturyLink (f/k/a Embarq) (“CenturyLink”). Order 2010-542 denied Genesis’ Complaint and granted CenturyLink’s counterclaim. Genesis requests that this Commission reconsider that Order in several particulars. However, because of the reasoning stated below, we deny and dismiss the Petition.

The dispute in the present case centered around the existing interconnection agreement between the parties and whether CenturyLink was obligated to provide DS1 lines with the speed measured in “megabytes” as provided in the contract and FCC rule, or whether such speed of the provided lines should be measured in “megabits,” which appeared to be the industry standard. Genesis insisted that use of “megabytes” was appropriate, while CenturyLink asserted that a speed of 1.544 “megabits” per second was proper, as shown by the relevant ANSI-approved standards. Genesis’ Petition rests on its assertion that the contract is clear on its face that CenturyLink is not providing DS1

service as defined in the contract or that if the contract is not clear, it should be construed against the drafter, which it asserts was not Genesis. In Order No. 2010-542, this Commission held that the CenturyLink position defining the parameters and speed in “megabits” was appropriate and ruled in favor of CenturyLink on its counterclaim. We found, among other things, that Genesis’ conduct was evidence of the parties’ intent, and that Genesis did not question the speed of the DS1 product provided by CenturyLink and its predecessor corporation Embarq for the first five and a half years of the implementation of the parties’ interconnection agreements. We also found that CenturyLink provides DS1 loops in accordance with industry standards and practices, and that CenturyLink properly billed Genesis for the DS1 loops provided. We see no reason to change our prior holdings.

In its Petition, Genesis fails to identify any facts or law that have been overlooked or misapprehended by this Commission. Genesis merely rehashes its prior arguments that have already been rejected. On this basis alone, Genesis’s Petition must be denied and dismissed. However, we will discuss certain points asserted by Genesis in its Petition in more detail.

First, Genesis claims that “the ambiguity in the ICAs (interconnection agreements) must be construed against CenturyLink” because, Genesis asserts, “it is patently obvious that Genesis did not draft its current ICA.” We disagree. What Genesis fails to recognize is the significance of its voluntary adoption of the Bullseye ICA. CenturyLink did not negotiate the drafting of the Bullseye ICA with Genesis. Instead, Genesis chose to adopt it, rather than keep its original ICA or opt for any of the other

ICAs that CenturyLink had entered into. In that contractual scenario, any ambiguity in the voluntarily adopted ICA might equally be construed against the company that chose the particular contract, namely Genesis. Genesis's argument remains unavailing and is unaccompanied by any other assertion to persuade this Commission that it was incorrect in determining that CenturyLink has provided DS1 loops to Genesis in accordance with the ICA chosen by Genesis, federal regulations, and industry standards.

Further, although Genesis points out a portion of CenturyLink witness Showers' testimony to the effect that the terms "bit" and "byte" are "distinctly different" (Tr. p. 79, ll. 15-16), Showers also suggests that the word "megabytes" is used interchangeably with the word megabits in the FCC rule, since it is clear from the discussion in the TRO that the FCC recognizes that 1.544 megabits per second is the industry standard for the speed of DS1 loops. Tr. pp. 71, 79. Showers also attaches relevant industry standards as exhibits to his testimony to provide further evidence on this point. Composite Hearing Exhibit 2. Thus, the "distinctly different" language as pointed out by Genesis is unavailing.

Genesis also asserts that the TRO Order does not provide support for this Commission's conclusion that DS1 speed is properly measured in megabits, based on the fact that this Commission cites one footnote out of many that exist in the TRO. Genesis does not state, however, that the one footnote cited is contained in the specific portion of the order that addresses unbundled loops, including DS1 loops. Further, there is nothing anywhere in the body of the TRO itself that uses the term "megabyte" to describe the speed of DS1 service. It is exactly this discrepancy between the use of "megabyte" in the

FCC rule (which Genesis acknowledges) and the use of “Mbps” or “Megabits” in the TRO Order itself that supported our decision that found the use of the term “byte” was either an error, or intended to be used interchangeably with “bit.” Order at page 9, par. 7.

In addition, although Genesis does not dispute the correctness of the Commission’s finding that 1.544 Megabits is the industry standard speed for DS1s, Genesis seems to argue that the parties intended DS1 loops to be something different under the agreement. Genesis Petition at page 2. This Commission specifically considered and rejected this argument in reaching our conclusion that CenturyLink’s provision of DS1 loops in accordance with the cited industry standards complied with the requirements of the interconnection agreement. Order at page 12. Genesis identifies no evidence that the Commission overlooked or misapprehended that would have allowed it to reach a different conclusion.

Finally, Genesis contends that the evidence does not demonstrate that the industry standards produced by CenturyLink are applicable to the DS1s provided by CenturyLink. Genesis Petition at page 3. Again, this argument does not identify any point of fact or law overlooked by this Commission, which considered the positions and evidence offered by the parties and concluded that CenturyLink provides DS1 loops in accordance with industry standards and practice.¹

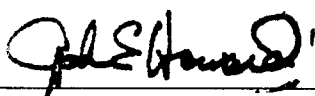
In conclusion, Genesis’s Petition cites no new matters which would convince this Commission that reversal of our decision in Order No. 2010-542 is appropriate.

¹ Genesis also incorrectly asserts that CenturyLink did not provide any connection between late-filed exhibit 6 and this case. Clearly, this Commission did not rely on this exhibit to support our conclusions, but CenturyLink did discuss the relevance of the exhibit at footnote 22 on page 14 of its post-hearing brief.

Therefore, the Genesis Petition for Rehearing or Reconsideration is denied and dismissed.

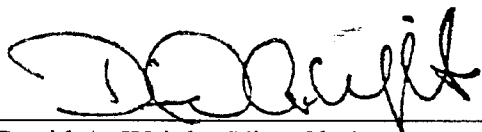
This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



John E. Howard, Chairman

ATTEST:



David A. Wright, Vice Chairman
(SEAL)